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10/805,023	03/18/2004	Hirokazu Ikeda	16869K-111100US	9205

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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2008*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21,23-25,27 and 28* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21,23-25,27 and 28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   The amendment of 4/7/08 has been entered. Claims 21, 23-24 (method) and 25,

27-28 (apparatus) are pending and are rejected as followed. Claims 22 and 26 have

been canceled.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

    1.   Determining the scope and contents of the prior art.
    2.   Ascertaining the differences between the prior art and the claims at issue.
    3.   Resolving the level of ordinary skill in the pertinent art.
    4.   Considering objective evidence present in the application indicating
          obviousness or nonobviousness.

4.   This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

5.   **Claims 21, 23-24 (method), 25, 27-28 (apparatus) are rejected under 35**

U.S.C. 103(a) as being unpatentable over VACANTE et al in view of HAYASHI et al.

As of 4/7/08, independent method claim 21 is as followed:

21. (Currently Amended) A job controlling method in a computer system

which includes a host computer and a storage apparatus, the method comprising:

a) defining a plurality of jobs, wherein each job in the plurality of

jobs is configured to execute a process for the host computer or the storage apparatus,

and wherein each job includes a first parameter for executing the process and a second

parameter indicating whether the first parameter can be changed;

b) storing global policy information for controlling the host computer or the

storage apparatus, the global policy information including a plurality of conditions to

which each job in the plurality of jobs should conform; and

for each job in the plurality of jobs:

c) calculating an inconsistency degree of the job with the global policy

information by comparing the first parameter of the job with the global information;

(d) outputting a result of comparison the first parameter of the job with the global

policy information, the result including the inconsistency degree;

(e) if the inconsistency degree is within a predefined threshold, then executing the job according to the parameter; and

(f) if the inconsistency degree is not within the predefined threshold, then if the second parameter indicates that the first parameter can be changed, changing the first parameter of the job according to the result of the comparison and recalculating the inconsistency degree.

Note, for convenience, letters (a)-(f) are added to the beginning of each step.

6.   Note: In claim 21, step (a), the phrase "is configured to execute …storage apparatus" is not a positively recited method step but, rather, is mere intended use of the defined plurality of jobs and thus having no patentable weight. See MPEP 2173.05 (q), 2106, and 2111.04, which indicate that a method claim requires active, positive steps.

7.   2) In claim 21, step (b), the phrase "for controlling the host computer …jobs should conform" is not a positively recited method step but, rather, is mere intended use of the stored global polity information and thus having no patentable weight. See MPEP 2173.05 (q), 2106, and 2111.04, which indicate that a method claim requires active, positive steps.

8.   As for the limitation "global policy" in "information", they are considered as non-functional descriptive material (NFDM) on the data of "…", thus having no patentable weight. The mere insertion of "global policy" data over "data" does not "impart

<u>functionality</u> when <u>employed as a computer component</u>", thus having no patentable weight.

See MPEP 2106.01 "Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which <u>impart functionality when employed as a computer component</u>. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

9.   As for the phrase "can be changed" in step (f), this appears to be an "optional" since it's not positively claimed.

Note that in view of steps (b)-(d) and (e2), the term "job" in (b) is merely an item such as information or data and the subsequent phrase "for <u>executing a process</u> for the host computer or the storage computer" is considered as non-functional descriptive material and carries no patentable weight. This phrase merely "describes the function of the job" and thus having no patentable weight. Step (c) below (b) basically calls for comparing two data, one is the parameter data of the job and two is the condition information data. There is no step for "executing a process" in the claim. There is "executing the job", but not "the process" in (e1) but this is optional since there is (e2) which bypass (e1).

Similarly, **VACANTE et al** which deals with a method for controlling an

information processing system {see Fig. 1}, comprising the steps of:

(a) storing a condition information processing system including a provision to

policies each of which defines a process to be executed in the system, wherein the

strategy is a control (precedent) policy to manage network traffic {see col. 1, lines 55-

57, col. 3, lines 8-38, Fig. 2},

(b) defining a job for executing a process for the host computer or the storage

apparatus with a parameter for executing (managing traffic of the network) {see col. 1,

lines 12-57, col. 4, lines 30-65}; and

(e) changing said parameters so that said policies meet the control (precedent)

strategy when said parameters are set to said processes defined in said policies", {see

col. 1, lines 55-65, col. 4, lines 30-55}

(e2) changing configuration as necessary to implement the policy {see Fig. 4,

460, col. 1, lines 60-65, col. 4, lines 55-67, "...*until corrected, the network may be*

handicapped in its ability to carry traffic... user to correct....", col. 5, lines 1-45}.

Note that VACANTE et al discloses on col. 3, lines 39-60, that a policy is abstract

set of rules containing conditions information which, when evaluated, determine how

traffic on a network is to be handled. On Figs. 3-4, VACANTE et al also teaches the

evaluation, testing and changes of various targets (job parameter) with the policy.

Therefore, even though VACANTE et al discusses about the changing in policies

information, the changes in conditions or targets which affect the policies, it would have

been obvious to a skilled artisan to use other type of information such as parameter of

the job with the condition information as mere using other type of information which

would affect how the traffic is managed (job parameter).

VACANTE et al fails to teach steps (c.), (d) and (e2) according to the comparison

and recalculating the inconsistency degree.

In a similar method for system for approximate reasoning, HAYASHI et al

teaches steps (c.), (d) and (f) for the benefits of obtaining more accurate results of

reasoning (comparing analysis) by applying weight to the knowledge of each data {see

col. 2, lines 40-65, col. 3, lines 7-55, col. 4, lines 10-60, Figs. 10-18}. It would have

been obvious to modify the teachings of VACANTE et al by adding steps (c.), (d) and (f)

as taught by HAYASHI et al to obtain the cited benefits of more accurate results of

reasoning or comparing analysis.

As for dep. claim 23 (part of 21 above), which deals with well known job

controlling parameters, i.e. outputting results for effective monitoring, it would have been

to do so to effectively monitor the changes.

As for dep. claim 24 (part of 21 above), which deals with well known job

controlling parameters, i.e. repeating steps (e) and (f), these are well known steps and

are taught in col. 3, lines 30-60.

As for **independent apparatus claim 25**, which is merely the apparatus to carry

out the method claim 21 above, it's rejected over the apparatus of VACANTE et al and

HAYASHI et al to carry out the rejections of the steps of claim 21 above. Moreover, it

would have been obvious to a skilled artisan to set up respective apparatus to carry out

the method claim 21 above.

As for dep. claims 27-28 (part of <u>25</u> above), which have the same limitations as

in dep. claims 23-24 (part of 21 above), they are rejected for the same reasons set forth

in dep. claims 23 and 24 above.

10.   Claims <u>21</u>, 23-24 (method), <u>25</u>, 27-28 (apparatus) are rejected (2nd time)

under 35 U.S.C. 103(a) as being unpatentable over (1) AHLSTROM et al in view of

(2) VACANTE et al and (3) HAYASHI et al.

Similarly, AHLSTROM et al which deals with a method for controlling an

information processing system {see Fig. 2A}, comprising the steps of:

(a) defining a job for executing a process for the host computer or the storage

apparatus with a parameter for executing {see col. 3, lines 40-50}; and

(b) changing said parameters so that said policies meet the control (precedent)

strategy when said parameters are set to said processes defined in said policies", {see

col. 5, lines 34-35, col. 9, lines 14-18, or lines 30-36} and

(g) re-determining the policy conflict or conflict resolution {see Fig. 2A, loops

(208), (210) and (212)}.

AHLSTROM et al <u>fails to</u> teach steps (c.), (d) and (f).

Note that VACANTE et al discloses on col. 3, lines 39-60, that a policy is abstract

set of rules containing <u>conditions</u> information which, when evaluated, determine how

traffic on a network is to be handled. On Figs. 3-4, VACANTE et al also teaches the

evaluation, testing and changes of various targets (job parameter) with the policy.

Therefore, even though VACANTE et al discusses about the changing in policies

information, the changes in conditions or targets which affect the policies, it would have

been obvious to a skilled artisan to modify the teachings of AHLSTROM et al by using

other type of information such as parameter of the job that affect the policy such as job

parameter (condition information) as taught by VACANTE et al as mere using other type

of information which would affect how the traffic is managed (job parameter).

AHLSTROM et al /VACANTE et al fails to teach steps (c.), (d).

In a similar method for system for approximate reasoning, HAYASHI et al

teaches steps (c.), and (d) for the benefits of obtaining more accurate results of

reasoning (comparing analysis) by applying weight to the knowledge of each data {see

col. 2, lines 40-65, col. 3, lines 7-55, col. 4, lines 10-60, Figs. 10-18}. It would have

been obvious to modify the teachings of VACANTE et al by adding steps (c.) and (d) as

taught by HAYASHI et al to obtain the cited benefits of more accurate results of

reasoning or comparing analysis.

As for dep. claim 23 (part of 21 above), which deals with well known job

controlling parameters, i.e. outputting results for effective monitoring, this is taught in

AHLSTROM et al col. 1, lines 20-30, Fig. 1 (120).

As for dep. claim 24 (part of 21 above), which deals with well known job

controlling parameters, i.e. repeating steps (e1) and (e2), these are well known steps

and are taught in AHLSTROM et al Fig. 2A.

As for **independent <u>apparatus</u> claim <u>25</u>**, which is merely the apparatus to carry

out the method claim 21 above, it's rejected over the apparatus of AHLSTROM et al

/VACANTE et al and HAYASHI et al to carry out the rejections of the steps of claim 21

above. Moreover, it would have been obvious to a skilled artisan to set up respective

apparatus to carry out the method claim 21 above.

As for dep. claims 27-28 (part of <u>25</u> above), which have the same limitations as

in dep. claims 23-24 (part of 21 above), they are rejected for the same reasons set forth

in dep. claims 23 and 24 above.

Response to Arguments

11.   Applicant's arguments of 4/7/08 with respect to claims 21, 23-25, 27-28 have

been considered but are not persuasive.

Applicant's major arguments that the teachings of VACANTE et al in view of

HAYASHI et al are not persuasive for the new interpretations of the claims as indicated

in paragraphs 6, 7, 8 and 9.

<u>Note</u>: In claim 21, step (a), the phrase "is configured to execute …storage

apparatus" is <u>not a positively recited method step</u> but, rather, is mere <u>intended use</u> of

the <u>defined plurality of jobs</u> and thus having no patentable weight. See MPEP 2173.05

(q), 2106, and 2111.04, which indicate that a method claim requires active, positive

steps.

2) In claim 21, step (b), the phrase "for controlling the host computer …jobs

should conform" is <u>not a positively recited method step</u> but, rather, is mere <u>intended use</u>

of the <u>stored global polity information</u> and thus having no patentable weight. See MPEP

2173.05 (q), 2106, and 2111.04, which indicate that a method claim requires active,

positive steps.

As for the limitation "<u>global policy</u>" in "information", they are considered as non-

functional descriptive material (NFDM) on the <u>data</u> of "...", thus having no patentable

weight. The mere insertion of "global policy" data over "data" <u>does not</u> "impart

<u>functionality</u> when <u>employed as a computer component</u>", thus having no patentable

weight.

See MPEP 2106.01 "Descriptive material can be characterized as either

"functional descriptive material" or "nonfunctional descriptive material." In this context,

"functional descriptive material" consists of data structures and computer programs

which <u>impart functionality when employed as a computer component</u>. (The definition of

"data structure" is "a physical or logical relationship among data elements, designed to

support specific data manipulation functions." The New IEEE Standard Dictionary of

Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive

material" includes but is not limited to music, literary works, and a compilation or mere

arrangement of data.

As for the phrase "can be changed" in step (f), this appears to be an "optional"

since it's not positively claimed.

Note that in view of steps (b)-(d) and (e2), the term "job" in (b) is merely an item

such as information or data and the subsequent phrase "for <u>executing a process</u> for the

host computer or the storage computer" is considered as non-functional descriptive

material and carries no patentable weight. This phrase merely "describes the function

of the job" and thus having no patentable weight. Step (c) below (b) basically calls for

comparing two data, one is the parameter data of the job and two is the condition

information data.   There is no step for "executing a process" in the claim. There is

"executing the job", but not "the process" in (g) but this is optional since there is (f)

which bypass (g).

Conclusion

12.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

No claims are allowed.

13.   Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see http://pair-direct@uspto.gov. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail CustomerService3600@uspto.gov .

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday. Should I be unavailable during my normal working hours, my supervisor Janice Mooneyham can be reached at (571) 272-6805. The main FAX phone numbers for formal communications concerning this application are **(571) 273-8300**. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689